

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ASTRAZENECA PHARMACEUTICALS LP,)	
ASTRAZENECA UK LIMITED,)	
IPR PHARMACEUTICALS, INC., and)	
SHIONOGI SEIYAKU KABUSHIKI KAISHA,)	
)	
Plaintiffs,)	C.A. No. 07-809-JJF
)	
v.)	
)	
APOTEX INC., and APOTEX CORP.,)	
)	
Defendants.)	

APOTEX CORP.'S MOTION TO DISMISS

Defendant Apotex Corp. hereby moves, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss Count I of the complaint for failure to state a claim upon which relief can be granted, because Apotex Corp. is not the party who filed the Abbreviated New Drug Application ("ANDA") at issue in this case, and under 35 U.S.C. § 271(e)(2)(A), only the entity that submits the ANDA can be sued for infringement under that section.

Apotex Corp. also moves to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), because there is no case or controversy between Plaintiffs and Defendants under 35 U.S.C. § 271(a), and any cause of action based on the preparation and filing of and ANDA at issue in this case is limited to a claim for infringement under 35 U.S.C. § 271(e)(2)(A). *See* 35 U.S.C. § 271(3)(1).

Finally, in the event that Apotex Inc.'s contemporaneously filed Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction is granted, Apotex Corp. moves to dismiss under Fed. R. Civ. P. 12(b)(7) because Apotex Inc. is an indispensable party and dismissal would be appropriate under Fed. R. Civ. P. 19(b).

A memorandum in support of this Motion is filed herewith.

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Dated: January 31, 2008
845873 / 32546

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CERTIFICATE OF SERVICE

I, Richard L. Horwitz, hereby certify that on January 31, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on January 31, 2008, I have Electronically Mailed the document to the following person(s):

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)	
Defendants.)	

ORDER

Having considered Defendant Apotex Corp.'s Motion to Dismiss;

IT IS HEREBY ORDERED this _____ day of _____, 2008 that the
Motion is GRANTED.

United States District Judge